

Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

|   |                                |
|---|--------------------------------|
| RAYMOND T. BALVAGE and DEBORAH )        |                                |
| A. BALVAGE, husband and wife, et al., ) | NO. 3:09-cv-05409-BHS          |
| )                                       |                                |
| Plaintiffs, )                           | DECLARATION OF CHARLES WEAVER  |
| )                                       | IN OPPOSITION TO DEFENDANT'S   |
| vs. )                                   | MOTION FOR SUMMARY JUDGMENT RE |
| )                                       | 2013 SURVEY                    |
| RYDERWOOD IMPROVEMENT AND )             |                                |
| SERVICE ASSOCIATION, INC., a )          |                                |
| Washington non-profit corporation, )    |                                |
| )                                       |                                |
| Defendants. )                           |                                |

I, Charles Weaver, declare as follows:

1. I am one of the plaintiffs in the above-captioned cause. I make this declaration on personal knowledge, in support of plaintiffs' opposition to defendant's motion for summary judgment regarding the 2013 survey. I am competent to testify to the following facts.
2. I was recently provided with the 594 page declaration of Dennis Knight regarding the 2013 survey, including defendant's survey forms. Through counsel, plaintiffs have been requesting this data since approximately June 2013. It was not provided to us, however, until defendant filed the present motion for summary judgment. Based upon my initial review of the data provided, there are errors, omissions, and inconsistencies. However, I have not had a reasonable opportunity to review and evaluate the entirety of the data. Plaintiffs respectfully

1 request a reasonable extension of time, 30 days, in order to give us a fair opportunity to review  
2 and evaluate these hundreds of pages of documents.

3         3.       An example of the questions I would raise can be seen on the very first survey  
4 form provided, for Bichlers (Dkt. #259-4, p. 2 of 128). Defendant's survey form lists years for  
5 the Bichlers' purported dates of birth. However, no driver's licenses or other documentary  
6 verification of those purported birth years are included with the survey form.

7         4.       Furthermore, the survey results are to be verified by "reliable" surveys and  
8 affidavits. As far as I can tell from my initial review, not one of the survey forms is verified to  
9 be true and accurate by a sworn declaration or affidavit under penalty of perjury. The forms  
10 cannot be deemed reliable or in compliance with HOPA regulations unless the information relied  
11 upon is sworn to be true and accurate by affidavit or declaration.

12         5.       Defendant also arbitrarily chose to include properties that are admittedly not part  
13 of Ryderwood as part of this survey. What is the basis for including those properties in this  
14 survey? This Court previously noted that properties not within the original Ryderwood plot and  
15 not developed by Senior Estates are not part of Ryderwood. *See* Order re Enforcing Bylaws  
16 (Dkt. #100). Including non-Ryderwood properties fatally flaws this survey.

17         6.       Defendant admittedly opted not to survey any of the residences purportedly  
18 occupied by any of the plaintiffs. In determining whether any particular plaintiff in fact occupied  
19 the residence, defendant admittedly relied upon discovery responses that may or may not have  
20 still been accurate as of the time of the survey. In light of defendant's decision not to survey the  
21 properties owned by the plaintiffs, defendant did not rely upon the best available evidence, which  
22 would have consisted of actual contact or other communication with the plaintiffs. The data  
23 defendant utilized concerning the plaintiff-owned properties cannot be considered as reliable,  
24 calling into question the entire 2013 survey.

1           7. Defendant also takes great pains to contend that the survey chairpersons are in  
2 effect disinterested individuals. This contention is inconsistent with the facts. Mr. Knight is  
3 admittedly a member of RISA's Board of Directors. He has also filed multiple declarations with  
4 this Court in support of various motions brought by defendant. Mr. Knight can hardly be  
5 considered a disinterested individual. The other chairperson, Cissy Sanders, has been a key  
6 witness and participant regarding the purported survey from 2007. She is also far from  
7 disinterested.

8           8. The HOPA affidavit (Exh. E to the Knight Declaration) is then signed by Sally  
9 Gene De Briae. As the Court knows from previous filings, she has long been defendant's point  
10 person in this lawsuit. She, too, has filed multiple declarations with this Court. Ms. De Briae is  
11 as far from disinterested as one could possibly get.

12           9. Moreover, the two persons who signed the HOPA affidavit have no personal  
13 knowledge regarding the validity, accuracy, or reliability of the information contained in the  
14 survey forms. Without such personal knowledge, and with the survey forms not having been  
15 verified under oath, their signatures on the HOPA affidavit are meaningless.

16           10. Defendant also utilized unreliable and inadmissible information to make  
17 conclusions regarding purportedly "vacant" homes and homes in which the occupants would not  
18 or did not provide documentation of their age. *See* generally Knight Declaration, at ¶¶ 12-14.  
19 Instead of obtaining verifiable and reliable information, defendant relied upon hearsay  
20 information from neighbors, hearsay information from real estate agents, hearsay information  
21 with owners of record, and the "personal knowledge" of members of defendant's survey team.  
22 *Id.* at ¶ 14. Not only has this hearsay information not been summarized and provided, the  
23 information is inadmissible in any event. Defendant's reliance on undisclosed and inadmissible  
24 information renders the survey results unreliable.

1           11. Finally, it is telling that defendant asked HUD to comment upon its survey  
2 procedures and results almost eight months ago (*see* Richard Ross Declaration, Dkt. #258), but  
3 has still not received a substantive response. If defendant's procedures, data, and results were as  
4 solid and reliable as defendant claims, one would think that HUD would have provided  
5 defendant with approval by this time. The silence from HUD is deafening.

6           12. Based upon the foregoing shortcomings, discrepancies, errors, and inadequacies,  
7 it should be concluded that there are genuine issues of material fact regarding the reliability of  
8 defendant's 2013 survey and therefore whether the survey is compliant with HOPA  
9 requirements. Plaintiffs request that defendant's motion for summary judgment be denied or, at  
10 a minimum, that the plaintiffs be granted additional time to provide a supplemental response to  
11 defendant's motion after I have had a reasonable opportunity to review and analyze the 2013  
12 survey data.

13           I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE  
14 OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

15           DATED this 3<sup>RD</sup> day of February, 2014, at Kelso, Washington.

16  
17   
18 \_\_\_\_\_  
19 CHARLES WEAVER  
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24  
25

**CERTIFICATE OF SERVICE**

I hereby certify that on February 3, 2014, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Dated: February 3, 2014.

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